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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/514,033	02/25/2000	Donald L. Brodigan	1589 (USW0563PUS)	7568

22193 7590 09/23/2005

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EXAMINER

SHANG, ANNAN Q

ART UNIT PAPER NUMBER

2617

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/514,033	Applicant(s) BRODIGAN ET AL.	
	Examiner Annan Q. Shang	Art Unit 2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

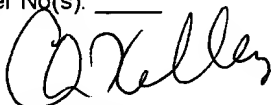
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.



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Continuation of 11. does NOT place the application in condition for allowance because: With respect to independent claims 1 and 5, Applicant recites a method of the claimed invention and argues that, "Hendricks describes a network manager for cable television system head ends. Hendricks relates to managing and coordinating the reception of various programming and control signals at a head end. Hendricks does mention the accommodation of system services including video on demand and generation of standard and customs menus. However, Hendricks fails to suggest the claimed invention." It is to be appreciated that claim 1 specially recites sending the private data packet in addition to the broadcast video from the service provider, establishing the impulse pay-per-view communication path between the set top box and the service provider, among other related limitations. Hendricks fails to suggest these features."

In response, Examiner disagrees. Examiner notes applicant's arguments, however, as discussed in the last or Final office action, Hendricks discloses Head end (HE) 208 "a broadband digital terminal" which receives various interactive program(s) "video" and interactive Custom Menus "private data packet" which includes Interactive Menus data "application interface information" from Operation Center (OC) 202 "a service provider" having an address (channel number(s)) and uses a data network such as telephone, ATM, etc., to establishes a virtual channel (col. 34, line 61-col. 35, line 5) "communication path" between OC 202, HE-208 and set top terminal(s) (STT(s)) 220 via the bidirectional fiber/coax link and terrestrial link 218, to provider customized interactive programming or personalized interactive programming over the data path, providing impulse pay-per-view (IPPV), NVOD, VOD, etc., services between OC 202, a HE 208 and a specific STT(s) 220. Hendricks further teaches that in response to a user's interaction to the interactive program, the OC 202 sends specific or custom menus or data packets "private data packet" to a specific STT 220, in real-time to provide the interactive services and establishes the necessary specific virtual channel path(s) to communicate data and control signals, between OC 202, HE 208 and STT(s) 220, to meet the user's request. Furthermore figures 1-3a and 6a-8, shows the arrangements of the claimed (independent claims 1 and 5) invention, which permits the user to receive the customized interactive programming (IPPV/VOD and Menus). Hence Examiner, maintains the rejection is proper and meets all the claimed limitations

Applicant further argues that, "the Examiner has equated operations center 202 to the claimed service provider. Even if the Examiner's interpretation is accepted, Hendricks still has shortcomings. The impulse pay-per-view communication disclosed in Hendricks relates to connections between the head end and a set top terminal. Even if the operation center 202 is considered to be a service provider within the broadcast meaning of the term, Hendricks still fails to suggest the claimed invention." and further argues that "there is no suggestion the operation center 202 is sending private data packets in addition to broadcast video over the network, through the broadband digital terminal, to the set top box wherein an impulse pay-per-view communication path is established between the set top box and the service provider."

In response, Examiner disagrees. Hendricks disclosure teaches a delivering system based on a user's interaction to an interactive program(s) and provides interactive services, in response to a user's request, see col. 6, line 66-col. 7, line 28 which discloses that, "the program delivery system 200 transports digital signals or analog signals to the cable headend 208 via satellite 206 or terrestrial link 218...", and where the terrestrial link 218 includes ATM networks, local feeds and other signals. Furthermore the HE 208 communicates to OC 202, which customizes menus and video programs to a specific STT 220 (note that the customized menus and programs specific to a particular STB are "private data packets"), based on the user interaction, in real-time, to the interactive program(s) and the interactive menus. Note further that the delivery of the requested interactive program can be spooled directly from OC 202 via HE 208 to the STT 220 over a specific channel or virtual channel and to avoid delays in delivering the program(s), HE 208 upon a request from the user via STT 220, may play a few minutes of the program before receiving the rest of the requested program from OC 202 in real-time (col. 34, line 60-col. 35, line 20). Examiner maintains from the above cited columns that OC 202 is a service provider providing customized menus and programs to STTs 220 via head end 208 "a broadband terminal. Hence, the rejection is proper and meets all the claimed limitations.

Applicant further argues that, "there is no suggestion of establishing such path with the operation center 202, which the Examiner has called a service provider, let alone establishing the path in the particularly claimed way."

In response, Examiner disagrees. Examiner again notes applicant's arguments, however, as discussed above, Hendricks teaches establishing a virtual channel path, which enables the OC 202, a HE 208 and a specific STT 220 to establish a communication path for the delivering of the interactive programming and menus based on requests made interactively by the STT 220. Hence, Hendricks teaches the claimed sending a "private data packet" and the other elements as claimed, with respect to independent claims 1 and 5.

Examiner maintains the U.S.C. 102(e) rejection using Hendricks is proper and maintained, meets all the claimed limitations of independent claims 1 and 5 and their dependent claims, in addition to the U.S.C. 103(a) rejection of claim 11, over Hendricks in view of Mimura et al (6,557,031). The rejections discussed in the last Office Action is, hereby being maintained and made FINAL.